

Superfund Program Implementation Manual FY 04/05

Appendix J: Tribal Involvement

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Appendix J Tribal Involvement

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Appendix J
Tribal Involvement

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APPENDIX J TRIBAL INVOLVEMENT

J.A. BUILDING SUPERFUND PARTNERSHIPS

FY04/05 goals to support building Superfund partnerships and leveraging existing resources are:

- Provide tools for regions to use to promote and continue early community involvement in key cleanup decisions, specifically regarding land use, risk assessment, and RODs;
- Work with state, tribal, and business associations to determine ways to improve their capabilities to clean up hazardous substances and respond to spills; and
- Implement a cooperative program with oil companies to prevent and respond to leaking above ground tanks. Initiatives include continuing the implementation of the Brownfields Economic Redevelopment Initiative and SRP, enhancing the state/tribal role, providing states/tribes with increased funding allocation decision authority, clarifying the policy for NPL listings and deletions of sites based on RCRA deferral, and providing states and tribes with an increased role in remedy selection.

J.A.1. ENHANCED STATE AND TRIBAL CAPABILITIES

States and Indian tribes are key partners in the cleanup of Superfund hazardous waste sites. Regions should continue their efforts to enhance the role of states and tribes in the Superfund program. HQ strongly encourages the use of the full range of cooperative agreements to provide financial support for state and tribal Superfund programs and site-specific involvement in NPL and non-NPL sites. In particular, core funding is critical to develop, maintain and enhance states' and tribes' capacity to manage and implement CERCLA responses.

During FY 99-00, all regions participated in the National effort to pilot the "Plan to Enhance the Role of States and Tribes in the Superfund Program." In a January 2001 memorandum and accompanying evaluation report, HQ shared the lessons learned from pilot implementation with the regions, and provided direction for future on-going efforts to enhance EPA's partnership with states and tribes in the implementation of Superfund.

In FY 00, OERR developed four new annual performance measures (APM) for tribes under GPRA Goal 5.2.2: Respond to Superfund Hazardous Waste Sites, Objective 1. These were implemented as reporting APMs in FY 01. OERR will continue to emphasize increasing the number of Indian tribes participating in the Superfund program, as expressed through the number of tribes supported by Superfund cooperative agreements (APM 1). This will be evidenced by an increase in the number of site assessments (PA/SI) conducted in Indian Country (APM 2), the amount of funding for building tribal capacity (APM3), and the percentage of Superfund sites impacting Indian country where a tribe is involved as either the lead or support agency (APM 4). OERR manually gathered the information directly from the regions to establish a baseline for these performance measures for FY 02. As of FY 03, two new special initiative indicators, Tribal Concern (TC) and Tribal Involvement (TI), have been added to WasteLAN to aid in tracking these measures.

J.A.2. SUPERFUND BLOCK FUNDING/EPA PERFORMANCE PARTNERSHIP GRANTS

EPA has developed an Agency-wide system for providing states/tribes with increased funding allocation decision authority. The National Environmental Performance Partnership System (NEPPS) establishes a structure for Performance Partnership Grants (PPG), a single grant made to a state or tribe from grant funds allocated and otherwise available for existing categorical grants programs. PPGs are voluntary and provide states and tribes with the option to combine funds from two or more categorical grants into one or more PPG(s).

By statute, Superfund monies cannot be included in PPGs, however Superfund is utilizing consolidated (aka, block) cooperative agreement funding to move in a direction consistent with PPGs. EPA will be working to encourage further progress toward the goals of flexible funding within the context of strong program commitments to Superfund outcomes. The Superfund cooperative agreement regulation, Subpart O, is being revised to facilitate use of consolidated funding where appropriate.

J.A.3. FUNDING FOR STATES AND TRIBES

For FY 04/05 it is important that regions provide funding for state and tribal Core needs at a level approximately equivalent to the FY 1996-2001 average annual funding, within available resources. If, due to resource constraints or a reduced level of eligible state/tribal Core needs, regions plan to fund a state or tribe at less than 90% of the FY 1996-2001 average level for that state or tribe, notification to Headquarters is required.

Starting in FY03, Superfund Core Program Cooperative Agreements will no longer be the vehicle for funding the Brownfields Voluntary Cleanup Program. Due to the passage of the new Brownfields law (Public Law 107-118), FY 04/05 funding for state and tribal response programs (which includes Brownfields VCP's) will be provided under the authority of CERCLA 128(a). If the President's FY 04/05 budget passes, the CERCLA 128 grant program will be financed from new appropriations under categorical State and Tribal Assistance Grants (STAG) money, not Superfund money. Superfund money from FY02 and before that was allocated to Brownfields Voluntary Cleanup Programs or Targeted Brownfields Assessments (including money that is deobligated and reobligated) may continued to be used in Superfund Core Program Cooperative Agreements. Please note that this Brownfields-related Superfund money may not be used to fund CERCLA 128(a) cooperative agreements with states and tribes.

J.B. FY 04/05 TARGETS AND MEASURES

J.B.1. OVERVIEW

There are five measures which illustrate the extent to which the Superfund Program is active at sites which are of concern to tribes and the level of involvement of the tribes at those sites. The universe of sites considered for these measures is all Superfund sites—including NPL, NPL-equivalent, removal, and emergency response—which are of concern to a tribe, regardless of where the site is located in relation to tribal lands. These sites are determined by the site manager and regional tribal liaisons, in discussions with the tribes, and are identified in WasteLAN by use of the tribal flag [Special Initiative = Tribal Concern]. Regions should enter this flag when a site is first entered into WasteLAN or at any point after that at which a tribe expresses that the site is of concern to them.

Brownfields sites which are of concern to tribes are not included in these Superfund measures.

EXHIBIT J.1.
TRIBAL INVOLVEMENT ACTIVITIES

ACTIVITY	GPRA		PROGRAM	
	APG	APM	Target	Measure
Superfund Assessments Conducted at Sites that are of Concern to Tribes (Current FY/Inception to Date)		✓		
Percentage of Sites that are of Concern to Tribes which have had a Superfund Assessment				✓
Tribes Supported by Superfund Cooperative Agreements				✓
Superfund Dollars Provided for Building Tribal Capacity				✓
Percentage of Superfund Sites that are of Concern to Tribes where a Tribe is Actively Involved		✓		

a. SUPERFUND ASSESSMENTS CONDUCTED AT SITES THAT ARE OF CONCERN TO TRIBES (CURRENT FY/INCEPTION TO DATE)

Definition:

This measure counts all Superfund assessments conducted at sites that are of concern to tribes, regardless of whether USEPA, a state, or a tribe performs the assessment.

Definition of Accomplishment:

This number includes all types of assessments—including preliminary assessments (Action Name = Preliminary Assessment), site inspections (Action Name = Site Inspection), combined PA/SIs (Action Name = Combined PA/SI), expanded site inspections (Action Name = Expanded Site Inspections), removal assessments (Action Name = Removal Assessment), integrated removal assessments (Action Name = Int Rmvl Assess and Preliminary Assessment, Action Name = Int Rmvl Assess and Site Inspection, Action Name = Int Rmvl Assess and Combined PA/SI, Action Name = Int. Rmvl Assess and Expanded Site Inspection, Action Name = Int. Rmvl Assess and HRS Package, and Action Name = Int. Rmvl Assess and ESI/RI) and any reassessments (Action Name = Site Reassessment)—conducted at sites. A site that is of concern to a tribe is indicated by the Tribal Concern (TC) Special Initiative. There are two separate counts to this measure: one for the current fiscal year and one for the cumulative number of assessments from the inception of the Superfund program.

Changes in Definition FY 02/03- FY 04/05:

None.

Special Planning/Reporting Requirements:

This is a GPRA reporting measure. In order to receive credit for this measure, the Tribal Concern (TC) Special Initiative must be added to the Site Description/Operable Units screen in WasteLAN.

b. PERCENTAGE OF SITES THAT ARE OF CONCERN TO TRIBES WHICH HAVE HAD A SUPERFUND ASSESSMENT

Definition:

This measure tracks the percentage of sites that are of concern to tribes that have had a Superfund assessment performed at the site versus those that have not had any assessment performed to date.

Definition of Accomplishment:

This measure counts all sites that have a Tribal Concern (TC) special initiative that have also had any type of Superfund assessment—preliminary assessment (Action Name = Site Assessment), site inspection (Action Name = Site Inspection), combined PA/SI (Action Name = Combined PA/SI), expanded site inspections (Action Name = Expanded Site Inspections), integrated removal assessments (Action Name = Int Rmvl Assess and Preliminary Assessment, Action Name = Int Rmvl Assess and Site Inspection, Action Name = Int Rmvl Assess and Combined PA/SI, Action Name = Int. Rmvl Assess and Expanded Site Inspection, Action Name = Int. Rmvl Assess and HRS Package, and Action Name = Int. Rmvl Assess and ESI/RI) or removal assessment (Action Name = Removal Assessment)—at any point in time, as compared to the total universe of sites with a Tribal Concern (TC) Special Initiative.

Changes in Definition FY 02/03- FY 04/05:

None.

Special Planning/Reporting Requirements:

This is a program reporting measure. In order to receive credit for this measure, the Tribal Concern (TC) Special Initiative must be added to the Site Description/Operable Units screen in WasteLAN.

c. TRIBES SUPPORTED BY SUPERFUND COOPERATIVE AGREEMENTS

Definition:

This measure tracks the total number of tribes receiving Superfund assistance or support.

Definition of Accomplishment:

This measure counts all tribes supported by any Superfund cooperative agreement (i.e., core, support agency, pre-remedial, remedial, removal, or enforcement) regardless of the purpose of the agreement. If the cooperative agreement is with an inter-tribal consortium, the total number of tribes in that consortium are included in the count, regardless of the number of tribes which might receive direct support from the specific agreement in a given year. The measure counts all open cooperative agreements, regardless of the year in which it was awarded to the tribe. A cooperative agreement is identified as being with a tribe or tribal consortium if the fourth digit in the bud/org. field of the account number is "A" (tribal).

Changes in Definition FY 02/03- FY 04/05:

None.

Special Planning/Reporting Requirements:

This is a program reporting measure. In order to receive credit for this measure, the fourth digit in the bud/org. field of the account number for the cooperative agreement must be "A".

d. SUPERFUND DOLLARS PROVIDED FOR BUILDING TRIBAL CAPACITY

Definition:

This measure tracks the total amount of Superfund dollars obligated through cooperative agreements with tribes to support their efforts to build tribal capacity.

Definition of Accomplishment:

This measure counts the total dollar amount obligated in the current fiscal year for any Superfund cooperative agreement with a tribe or inter-tribal consortium, regardless of the purpose of the agreement. A cooperative agreement is identified as being with a tribe or tribal consortium if the fourth digit in the bud/org. field of the account number is "A" (tribal).

Changes in Definition FY 02/03- FY 04/05:

None.

Special Planning/Reporting Requirements:

This is a program reporting measure. In order to receive credit for this measure, the fourth digit in the bud/org. field of the account number for the cooperative agreement must be "A".

e. PERCENTAGE OF SUPERFUND SITES THAT ARE OF CONCERN TO TRIBES WHERE A TRIBE IS ACTIVELY INVOLVED

Definition:

This measure tracks the percentage of Superfund sites that are of concern to a tribe, where a tribe plays an active role, versus those Superfund sites that are of concern to a tribe, where no tribe plays an active role.

Definition of Accomplishment:

A tribe is defined as playing an active role at a site if it has a written agreement (e.g., cooperative agreement, site-specific memorandum of agreement, or tribal environmental agreement (TEA)) with USEPA to participate at that site. These sites are identified in WasteLAN with a Tribal Involvement (TI) Special Initiative.

Changes in Definition FY 02/03- FY 04/05:

None.

Special Planning/Reporting Requirements:

This is a GPRA reporting measure. In order to receive credit for this measure, the Tribal Involvement (TI) Special Initiative must be added to the Site Description/Operable Units screen in WasteLAN.

J.C. SUBJECT MATTER EXPERTS

The following table identifies the subject matter experts for Appendix J, Tribal Involvement.

EXHIBIT J.2. SUBJECT MATTER EXPERTS

Subject Matter Expert	Subject Area	Phone #
Kirby Biggs	OERR Tribal GPRA Contact	(703) 308-8506
Robert Myers	OSWER Tribal Contact	(703) 603-8851